No. 14-1209

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

JOHN STURGEON,

*Petitioner,*

*v.*

SUE MASICA, IN HER OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF OF *AMICUS CURIAE* SAFARI CLUB INTERNATIONAL IN SUPPORT OF PETITIONER

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## INTEREST OF *AMICUS CURIAE*[1]

Safari Club International ("Safari Club") is a nonprofit corporation incorporated in the State of Arizona, operating under § 501(c)(4) of the Internal Revenue Code, with principal offices and places of business in Tucson, Arizona and Washington, D.C. and a membership of approximately 50,000. Safari Club's missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. Safari Club carries out its conservation mission in part through its sister organization, Safari Club International Foundation.

Safari Club has long been involved in litigation and other advocacy efforts to promote hunting, access to hunting, and sustainable-use conservation, including hunting opportunities on federal lands in Alaska. For almost a decade, Safari Club pursued litigation to challenge the Federal Subsistence Board's administration of subsistence priorities for hunting and wildlife resources on federal lands in Alaska and the composition of the federal advisory councils that provided recommendations on the allocation of those priorities. *Safari Club International*

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1. The following is provided pursuant to Supreme Court Rule 37. No counsel for a party authored this brief in whole or in part, and no counsel for a party and no party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than named *amicus curiae* made a monetary contribution to this brief. Counsel of Record for Petitioner consented to the filing of *amicus curiae* briefs in support of either or of neither party. Counsel of Record for Respondents consented to the filing of this brief after receiving timely written notice from the *amicus curiae*.

*et al. v. Demientieff et al.* No. 98–0414 (D. Alaska, HRH). In addition, Safari Club has participated or is currently participating in lawsuits involving, among other things, the listing and delisting of numerous species under the Endangered Species Act, states' authority and ability to manage wildlife populations via hunting, the U.S. Forest Service's application of the Roadless Rule on National Forest System lands, and the ability of hunters to import sport-hunted trophies into the U.S. from international hunts.

In this amicus brief, Safari Club will "bring[] to the attention of the Court relevant matter not already brought to its attention by the parties." Sup. Ct. R. 37(1). This brief provides information that will "be of considerable help to the Court." *Id.* Safari Club will not address the merits of the claims or legal arguments, especially as the Petitioner more than adequately covered these matters in his petition. Instead, Safari Club files this amicus brief to describe the impact that the district court's and Ninth Circuit's rulings are having and will continue to have on the hunting community.

This brief presents the view of both resident and nonresident hunters who enjoy Alaska's world-class hunting resources and opportunities and who require transportation on the waters that exist within the boundaries of Conservation System Unit ("CSU") lands administered by the National Park Service ("NPS").[2]

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2. Conservation System Units in Alaska include "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established,

Access to hunting areas and opportunities is of primary concern to Safari Club, its members, and many other hunters throughout the United States and the world. In Alaska, hunters often face significant obstacles to access hunting areas due to limited road coverage and the isolated nature of many valued hunting locations. Access to those opportunities depends upon hunters' ability to use all means of travel on rivers and other navigable waters in CSUs in Alaska. Safari Club and its members, along with the hunting community generally, seek to protect the full range of hunting and sustainable-use conservation opportunities available in Alaska.

## SUMMARY OF THE ARGUMENT

Safari Club supports the petition for a writ of certiorari filed by John Sturgeon because the outcome of this litigation affects many people who hunt in Alaska. The ability to access hunting areas is essential to the hunter. In Alaska, hunting opportunities are often found in isolated, difficult to reach places, to which there is no road access. A viable, and often the most viable, means of access is air travel by float plane. The NPS's decision, upheld by both the federal district court in Alaska and the Ninth Circuit Court of Appeals, that the NPS has the authority to regulate activity on the navigable waters that exist within CSU boundaries, poses a severe threat to all who wish to

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designated, or expanded by or under the provisions of [the Alaska National Interest Lands Conservation Act of 1980], additions to such units, and any such unit established, designated, or expanded hereafter." 16 U.S.C. § 3102(4), *see also* John Sturgeon's Petition for a Writ of Certiorari, at 7-8 n.2. For the purposes of this brief, all references to CSUs include only those CSU lands administered by the NPS.

hunt in these inaccessible locations. The extension of 36 C.F.R. § 1.2 to those waters triggered the application of 36 C.F.R. § 2.17 and its prohibition against the use of aircraft on navigable waters within CSUs. The regulatory ban against float planes landing on the majority of those waters will make it impossible for both resident and non-resident hunters and their guides to reach hunting locations within and around CSUs, including many National Preserves. Despite the fact that Congress mandated the authorization of hunting in Alaska's National Preserves, the NPS has thwarted Congress' directive by applying regulations that undermine hunters' abilities to access and use National Preserves for hunting.

## ARGUMENT

Safari Club supports John Sturgeon's petition for a writ of certiorari for the reasons stated in his petition. In addition, this Court should grant certiorari because "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. Rule 10(c). That issue – whether 16 U.S.C. § 3103(c) precludes the NPS from regulating activities on navigable waters found within the boundaries of CSUs administered by the NPS in Alaska – has not previously been considered by this Court.

In addition, this Court should grant certiorari because the impact of the Alaska district court and Ninth Circuit Court of Appeals' decisions extends far beyond John Sturgeon's personal hovercraft use. The courts' interpretations of section 3103(c) will deprive many hunters, guides, and outfitters of access to congressionally-mandated recreational activities available within and outside the boundaries of federal lands in Alaska.

### A. Respondents' Exercise of Authority Over Waters Within CSU Boundaries Deprives Hunters of Access to Hunting Opportunities

Petitioner John Sturgeon filed suit in federal district court in Alaska to challenge the exercise of authority by Respondent Sue Masica, in her official capacity as Alaska Regional Director of the National Park Service, and other Respondents, to prohibit Sturgeon from operating his hovercraft on navigable waters flowing within the boundaries of the Yukon-Charley Rivers National Preserve. Sturgeon, a hunter, used his hovercraft to travel to favored moose hunting locations in Alaska. The authority that Sturgeon brought this lawsuit to challenge, and that the district court and Ninth Circuit each upheld, impacts far more than his ability to visit a moose hunting area or even the ability of hunters generally to use hovercrafts within the boundaries of CSUs in Alaska. The authority that John Sturgeon's petition for a writ of certiorari asks this Court to review threatens the ability of hunters and guides generally throughout Alaska to access hunting opportunities located both inside and outside the boundaries of CSUs managed by the NPS. Unless this Court rejects the district court and Ninth Circuit's interpretation of Respondents' authority to regulate activity on navigable waters within CSU boundaries, hunters will be deprived of essential means of transportation to the remote hunting opportunities in and near many of the lands administered by the NPS in Alaska.

### B. The District Court and Ninth Circuit Rulings Deprive Hunters of Aircraft Access to Hunting Opportunities

Float planes, because they can land on water, provide an essential means of transportation for hunters in Alaska. The use of float planes in CSUs is at risk because of the rulings in this case. The Ninth Circuit, affirming the ruling of the district court, upheld the NPS's asserted authority, to regulate activities on

> navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands

36 C.F.R. § 1.2(a)(3). Not only would that authority enable the NPS to prohibit the use of hovercrafts on such waters within the boundaries of CSUs administered by the NPS, but pursuant to 36 C.F.R. § 2.17(a), it would also result in the prohibition against the use of most types of aircraft on those waters:

> (a) The following are prohibited:
> (1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

*Id.* § 2.17(a).

A prohibition on aircraft use of waters within CSU boundaries has a major impact on hunter access to

hunting opportunities in Alaska. The NPS administers approximately 43,522,000 acres of CSU lands in the state. 16 U.S.C. §§ 410hh, 410hh-1. Almost half of those lands were established under the Alaska National Interest Lands Conservation Act of 1980 ("ANILCA") as National Preserves, including the Anakchak (~ 367,000 acres), Bering Land Bridge (~ 2,457,000 acres), Denali (~ 1,330,000 acres), Gates of the Arctic (~ 900,000 acres), Glacier Bay (~ 57,000 acres), Katmai (~ 308,000 acres), Lake Clark (~ 1,214,000 acres), Noatak (~ 6,460,000 acres), Wrangell-St. Elias (~ 4,117,000 acres), and Yukon-Charley Rivers National Preserves (~ 1,713,000 acres) (totaling ~ 18,923,000 acres). *Id.* National Preserves are a major component of the lands in Alaska open to hunting.

Alaska's National Preserves, like many lands in the state, are actively hunted. Congress specifically mandated that the NPS authorize hunting on National Preserves in Alaska.

> A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping ***shall be allowed in a national preserve*** under applicable State and Federal law and regulation.

16 U.S.C. § 3201 (emphasis added); *see also* 36 C.F.R. § 1340(d).

Although Alaska's National Preserves are open to hunting, access to that hunting can be difficult. Few roads run through or access all areas of those Preserves. Several of the National Preserves cannot be reached by road at all. For example, boat and aircraft provide the only access to Katmai National Park and Preserve. "Hunting and trapping within Katmai National Preserve requires extensive planning. Access in most cases will involve air taxi service via float plane from King Salmon or one of the other surrounding villages." NATIONAL PARK SERVICE, KATMAI, SPORT HUNTING AND TRAPPING, http://www.nps.gov/katm/planyourvisit/hunting.htm (last visited May 1, 2015). Similarly, no roads lead into Gates of the Arctic National Park. "Most visitors access the park by air taxi, in small aircraft equipped with floats or tundra tires." NATIONAL PARK SERVICE, GATES OF THE ARCTIC, DIRECTIONS, http://www.nps.gov/gaar/planyourvisit/directions.htm (last visited May 1, 2015).

Hunters need to be able to land float planes on the waters running through National Preserves to reach the bear, moose, caribou, sheep, goat and other species that Congress directed the NPS to make available to them to hunt. The NPS's regulation, 36 C.F.R. § 2.17, if broadly extended to all navigable waters running through National Preserves by 36 C.F.R. § 1.2, could largely prohibit the use of aircraft on those waters. With diminished ability to reach those hunting opportunities by float plane, hunters will lose the access they require to participate in the National Preserve hunting that Congress mandated.

### C. The Restrictions on Access to Hunting Impact Hunters from Throughout the U.S. and the World

The world-class hunting opportunities in Alaska are not only important to Alaska residents, but to the residents of all the states (and other countries). Nonresidents flock to Alaska to experience some of the best hunting in the world.[3] As the Alaska Department of Fish and Game ("Department") explains:

> Alaska's hunting reputation is justly deserved. One-fifth the size of the entire United States, Alaska offers wilderness hunting opportunities found in few other locations in the world. It is true that huge moose occur here and that vast caribou herds dominate the landscape in some areas and seasons. Numerous mountain ranges support populations of Dall sheep and mountain goats, and Sitka black-tailed deer thrive in the

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3. While *amicus curiae* Safari Club is a hunting/conservation organization, many of its members also enjoy or make their livelihoods from fishing. Like hunting, fishing is extremely popular in Alaska. The estimated number of anglers in Alaska in 2013 was 465,936 and the number of angler-days fished in Alaska in 2013 was 2,202,957. Alaska Sport Fishing Survey, Statewide, ALASKA DEPARTMENT OF FISH AND GAME, http://www.adfg.alaska.gov/sf/sportfishingsurvey/index.cfm?ADFG=region.home (use the "Get Data" button in the "Regional Effect Summary" box to access charts containing these figures) (last visited May 1, 2015). As the Department states "[g]ood sport fishing isn't hard to find in Alaska. In fact, in this land of 3,000 rivers, 3 million lakes and 6,640 miles of coastline, a sport fisher's greatest challenge can be deciding where to get started." ALASKA DEPARTMENT OF FISH AND GAME, SPORT FISHERIES, http://www.adfg.alaska.gov/index.cfm?adfg=fishingSport.main (last visited May 1, 2015).

> coastal forests. Once extirpated from the state, muskox now range over the western and arctic coastal wilderness. Large numbers of black and brown bear also exist here. And wolves, which are found across most of the state, are also abundant in some areas.

ALASKA DEPARTMENT OF FISH AND GAME, INTRODUCTION TO ALASKA BIG GAME HUNTING, http://www.adfg.alaska.gov/index.cfm?adfg=hunting.biggameintro (last visited May 1, 2015). Because of its climate and terrain, Alaska offers some of the most challenging hunting in the United States. *Id.* The Department describes some of the animals that Alaska residents and nonresidents hunt:

- "Hunting is used to manage the size of these herds, and bison hunts are among the most popular drawing hunts in Alaska." ALASKA DEPARTMENT OF FISH AND GAME, BISON HUNTING IN ALASKA, http://www.adfg.alaska.gov/ index.cfm?adfg=bisonhunting.main (last visited May 1, 2015).

- "Alaska has an estimated 30,000 brown bears statewide. In 2007, about 1,900 brown bears were harvested in Alaska. Of that figure, about 700 were taken by Alaska residents and roughly 1,200 (or 67 percent) were taken by nonresidents." ALASKA DEPARTMENT OF FISH AND GAME, BROWN/GRIZZLY BEAR HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=brown bearhunting.main (last visited May 1, 2015).

- "On average, people harvest about 22,000 caribou in Alaska each year." ALASKA DEPARTMENT OF FISH AND GAME, CARIBOU HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=caribouhunting.main (last visited May 1, 2015).

- "Alaska's Dall sheep are popular with nonresident hunters, and the harvest is split fairly evenly between residents and nonresidents. In 2007, for example, nonresidents took 403 sheep, while resident hunters took 513, or about 57 percent." ALASKA DEPARTMENT OF FISH AND GAME, DALL SHEEP HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=sheep hunting.main (last visited May 1, 2015).

- "Between 1987 and 2007, an average annual harvest of about 12,330 deer has occurred in Alaska." ALASKA DEPARTMENT OF FISH AND GAME, SITKA BLACK-TAILED DEER HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=deerhunting.main (last visited May 1, 2015).

- "Alaskans and nonresidents annually harvest 6,000 to 8,000 moose, which translates into about 3.5 million pounds of usable meat." ALASKA DEPARTMENT OF FISH AND GAME, MOOSE HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=moosehunting.main (last visited May 1, 2015).

- "In 2007, 518 mountain goats were harvested in Alaska, 158 by nonresidents (about 30

percent) and 360 by resident hunters." ALASKA DEPARTMENT OF FISH AND GAME, GOAT HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=goathunting.main (last visited May 1, 2015).

- "Whether decoying brant over eel grass beds at Cold Bay, jump-shooting dabblers on Minto Flats, or waiting in a pit blind for a crack at speckle bellies in Delta, the variety of bird species hunted and the diversity of hunting venues are unique to the state. ... If you are new to the state or a non-resident, you may feel that hiring a Migratory Bird Hunting Guide would be a good way to go." There are "[a]pproximately 8,800 waterfowl hunters in Alaska ...." ALASKA DEPARTMENT OF FISH AND GAME, WATERFOWL HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=waterfowlhunting.main (last visited May 1, 2015).

- "Wolves may be harvested with a hunting license and/or a trapping license. Nonresident wolf tags are only $30, ...." ALASKA DEPARTMENT OF FISH AND GAME, WOLF HUNTING IN ALASKA, http://www.adfg.alaska.gov/ index.cfm?adfg=wolfhunting.opportunities (last visited May 1, 2015).

In addition to being extremely popular, hunting supports Alaska's economy and provides a living to many guides and outfitters, who mainly cater to nonresidents. Hunting also benefits others who provide services to the out-of-state visitors. As described in the report *Economic Impacts of Guided Hunting in Alaska*, prepared by the McDowell Group, Inc. for the Alaska Professional Hunters Association, (February 2014):

> In 2012, guides contracted with 3,207 hunters, 3,055 of them nonresidents. In total, hunters spent $51 million on guided hunts. Of the total, nonresident hunters spent an estimated $48 million. In addition to hunting packages, non-resident hunters and their companions spent another $3.5 million on lodging, food and beverage, clothing, souvenirs, and outdoor equipment, among other purchases while in Alaska. Dollars spent in Alaska by non-residents provides new dollars that help support the state's economy.
>
> Including $29.5 million in direct and indirect (multiplier effects) associated with this spending, guided hunting in Alaska accounted for $78 million in total economic activity in 2012. [Page 1]

The McDowell Group, *The Economic Impacts of Guided Hunting in Alaska*, (February 2014), http://alaskaprohunter.org/Economic_Impacts_of_Guided_Hunting_Final.pdf (last visited May 1, 2015). The report also noted that a significant percentage of the guided hunting occurred on federal lands, including NPS lands:

> Contracting guides reported that ... [a]lmost half of revenue was earned hunting on federal lands, including US Fish and Wildlife Service (22 percent), US Forest Service (11 percent), ***NPS (9 percent)***, and BLM (4 percent). Eight percent was derived from private land (including Alaska Native Corporation land)." [Page 9, emphasis added]

*Id.* (emphasis added). As examples of some of the opportunities available in NPS lands in Alaska, the following outfitters offer guided hunts for desirable big game species: Alaska Remote Guide Service (brown/black bear, moose, and dall sheep in Denali National Preserve), http://www.alaskaremote.com/denali.htm (last visited May 1, 2015); Wrangell Outfitters (moose hunts in Wrangell, St. Elias National Preserve), http://www.wrangelloutfitters.com/guided-hunts/alaska-moose-hunting/ (last visited May 1, 2015); Mountain Monarchs of Alaska (grizzly bear, moose, caribou and Dall sheep in Noatak National Preserve), http://www.mountainmonarchs.com/western-arctic-moose-grizzly-bear-caribou-guide-service.html (last visited May 1, 2015).

## CONCLUSION

A vast number of Alaska hunting opportunities will become inaccessible to hunters unless this Court grants the petition for a writ of certiorari submitted by John Sturgeon and reverses the rulings of the Alaska district court and Ninth Circuit. Respondents' exercise of authority over the navigable waters that exist within CSUs such as National Preserves triggers regulatory prohibitions against the use of aircraft on these waters. Those prohibitions will make it more difficult, if not impossible, for hunters to travel to valued hunting sites and enjoy Alaska's wildlife resources. Safari Club supports John Sturgeon's petition for a writ of certiorari and asks this Court to review the rulings of the courts below that, if not reversed, will deprive residents and non-residents of Alaska hunting opportunities.

Respectfully submitted,

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